

**To:** Costa, Dan[Costa.Dan@epa.gov]; Vette, Alan[Vette.Alan@epa.gov]; Schultz, Laurel[Schultz.Laurel@epa.gov]; Hassett-Sipple, Beth[Hassett-Sipple.Beth@epa.gov]; Baker, Kirk[Baker.Kirk@epa.gov]; Miller, Andy[Miller.Andy@epa.gov]; Winner, Darrell[Winner.Darrell@epa.gov]; Katz, Stacey[Katz.Stacey@epa.gov]; Robarge, Gail[Robarge.Gail@epa.gov]; Kim, Nicole Y[kim.nicoley@epa.gov]; Priester, Nicolle[priester.nicolle@epa.gov]  
**From:** Brown, Ann  
**Sent:** Fri 7/28/2017 7:07:25 PM  
**Subject:** FW: Research News Clips 7/28/2017

Politico article shows what a red/blue team debate of climate change might look like.

Best,

Ann Brown

Communications Lead

Air, Climate, and Energy Research Program

U.S. Environmental Protection Agency

Research Triangle Park, NC

Work: 919-541-7818

Mobile: 919-605-5827

brown.ann@epa.gov

**From:** McGuinness, Moira  
**Sent:** Friday, July 28, 2017 2:33 PM  
**Subject:** Research News Clips 7/28/2017

## ***Administrator Pruitt/EPA General***

### **EPA Chief disputes charge he spends too much time at home in Oklahoma *The Hill***

### **EPA: GOP senators press Pruitt to keep watch on science panel *E&E Daily***

Republican senators are asking U.S. EPA Administrator Scott Pruitt to ensure an agency advisory board that has been targeted by conservatives in the past is compliant with statutory law.

In a letter sent yesterday, Sens. John Barrasso (R-Wyo.), Shelley Moore Capito (R-W.Va.) and Mike Rounds (R-S.D.) noted that EPA last month began soliciting nominations to its Clean Air Scientific Advisory Committee (*Greenwire*, June 26).

They urged the EPA chief to ensure that the panel fulfills its requirements under the law.

"As you review 2017 nominations for CASAC members, we request that you put measures in place to ensure that moving forward, CASAC complies with these statutory obligations. CASAC must be constituted of experts who can provide independent counsel to you in all of the above areas," the senators said in their letter.

Barrasso is chairman of the Senate Environment and Public Works Committee. Capito and Rounds are also members of that committee.

One of those "above areas" the senators are referring to is CASAC providing information to the EPA administrator on "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of [national ambient air quality standards]."

The lawmakers cite a 2015 Government Accountability Office report that found that EPA had never asked for advice from the advisory panel on those effects.

CASAC has come under scrutiny in the past.

The Energy and Environment Legal Institute, a conservative-leaning think tank, filed a lawsuit to disband the panel after alleging its members were biased toward tighter pollutant limits after receiving EPA grants. That lawsuit failed to move forward (*Greenwire*, Aug. 2, 2016).

Also last year, Michael Honeycutt, the head of toxicology for the Texas Commission on Environmental Quality and a critic of EPA's tighter ozone standards, campaigned for a spot on the board but failed to secure one (*Greenwire*, Aug. 26, 2016).

## GOP's Push To Narrow EPA Deference Faces Unclear High Court Outcome Inside EPA

The Supreme Court's upcoming term could reshape judicial principles on deference to EPA and other agencies about their interpretations of law and regulatory text, given the GOP push to narrow or scrap precedents on the subject, observers say, but the fact that deference now benefits the Trump administration could blunt that effort.

Court watchers say that with the confirmation of Justice Neil Gorsuch -- who has sharply criticized judicial deference to executive agencies -- litigants are now likely to call on the Supreme Court to take up cases that directly target precedent on the subject, and to focus on it in suits that might otherwise turn on separate issues.

Even though no cases pending before the high court directly ask the justices to overturn deference principles, suits that touch on those issues are "a dime a dozen," and offer an opportunity to set new standards if the court is so inclined, Eugene Scalia -- son of the late Justice Antonin Scalia and an attorney at Gibson, Dunn & Crutcher -- said during the U.S. Chamber of Commerce's recent panel on the 2016 and 2017 Supreme Court terms.

Under the landmark 1984 high court decision *Chevron v. Natural Resources Defense Council*, judges are to defer to agencies' interpretations of ambiguous statutory text as long as their opinions are "reasonable."

The test has been a major factor in scores of challenges to EPA rules, such as the Supreme Court's 2016 decision that faulted the Obama-era finding that a rule limiting power plants' air toxics emissions was "appropriate and necessary," and is seen as giving regulators more leeway to enforce their preferred policies.

But conservatives on the high court have lately become more critical of the doctrine, with Justices Clarence Thomas and Samuel Alito arguing in dissents and concurring opinion that *Chevron* goes against the principle of separation of powers, because it allows agencies to effectively step into judges' role of deciding what an enacted law means.

While no current Supreme Court case tests whether to uphold *Chevron*, potential test cases continue to emerge in the lower courts -- such as the U.S. Court of Appeals for the District of Columbia Circuit's July 21 decision in *Competitive Enterprise Institute (CEI), et al., v. Department of Transportation, et al.*

There, the court invoked *Chevron* to block a suit from industry groups and the free-market CEI -- whose climate head, Myron Ebell, was a major player in the Trump administration "landing team" at EPA -- to strike down an Obama-era regulation banning electronic cigarettes on airplanes as a form of "smoking."

But While Circuit Judge Brett Kavanaugh and Senior Circuit Judge A. Raymond Randolph, both George W. Bush nominees, said the rule was permissible under *Chevron*, the majority opinion by Randolph questioned whether the landmark deference decision should apply beyond the Clean Air Act.

### **'Problematic' Doctrine**

"Chevron arose under the Clean Air Act, but courts -- including the Supreme Court and our court -- have applied the doctrine when interpreting other statutes. At least as a matter of first principles, this seems problematic. The Clean Air Act provides its own procedures and standards for judicial review that differ from other statutes, such as the Administrative Procedure Act's instruction to the 'reviewing court' to 'interpret constitutional and statutory provisions,'" Randolph wrote in the decision.

Kavanaugh wrote a separate concurrence to note that he would still have struck down the smoking rule even if *Chevron* were to be struck down or limited.

"Even without affording Chevron deference to the Department's interpretation of the statute, I would still reach the same result in this case," Kavanaugh wrote in a concurring opinion.

However, even though many conservatives -- including Republicans in Congress -- are calling for judicial deference to be sharply narrowed or eliminated entirely, observers expect the Trump administration to try to preserve those same principles in order to defend its own policies.

"Over the past eight years or so, there has been a lot of concern in conservative circles about too much deference to the agency, and a lot of the jurisprudence is cutting back on agency deference," Earthjustice attorney Deborah Goldberg said at a June 22 American Legal Institute-Continuing Legal Education panel on environmental litigation in Washington, D.C. "But to my mind it'll be very interesting to see how quickly the position flip-flops to the importance of deference to the agency when these same parties agree with what the agency's doing,"

President Donald Trump's appointment of Gorsuch, a *Chevron* critic, to replace Scalia on the bench has been seen as a win for the anti-deference wing of the court because Scalia, while a reliable conservative vote on most issues, was a *Chevron* supporter.

"Justice Scalia, at least until his very last years on the court, was the court's leading proponent of deference to administrative agencies on their interpretations of law. Justice Gorsuch was arguably the most articulate skeptic of that sort of deference among our courts of appeals judges," Eugene Scalia said at the Chamber panel discussion.

## DOJ's Position

The "flip-flop" scenario predicted by Goldberg and others may be playing out already; while the White House has backed a House-passed [regulatory reform bill](#) that would overturn *Chevron* -- and the similar *Auer* standard that dictates deference to agencies' readings of their own rules -- the Department of Justice (DOJ) is continuing to invoke deference in support of both the Trump administration's positions and some that originated with the Obama administration.

"When you're a critic of what an agency is doing and you seek to challenge what the agency is doing, you argue for less judicial deference," former EPA General Counsel Ethan Shenkman [told Inside EPA in a recent interview](#).

"But when you switch hats and you are now running that very agency -- and . . . potentially changing your interpretation of the statute or of your own regulations -- you're likely to invoke Chevron deference . . . in an effort to have the courts uphold the changes you are seeking to implement."

For instance, DOJ raised *Chevron* deference when it urged the Supreme Court to reject petitions to review *American Municipal Power (AMP), Inc. v. EPA, et al.*, which dealt with the Obama-era policy of setting Clean Air Act limits with no exceptions for emission spikes due to malfunctions. The government's brief said the Obama EPA acted within the discretion allowed by *Chevron* -- an argument that seemed to carry favor with the justices, as they [later declined](#) to take up *AMP*.

And more recently, DOJ filed a June 16 brief urging a district court to reject the suit *Upper Missouri Waterkeeper v. EPA*, saying the agency's approval of Montana water quality standards that allow variances from strict nutrient limits is a permissible interpretation of the Clean Water Act that satisfies *Chevron*.

## Future Tests

If *Chevron* is narrowed or eliminated, attorneys say it is difficult to predict what standard the Supreme Court could apply to decide when an agency is properly interpreting contradictory or vague statutory mandates -- legislators who support bills scrapping the deference precedent altogether have called for "*de novo* review," where judges would enforce their own reading of the law without regard for past practices, but legal observers say that may not be likely.

"There is always going to be some degree of deference" offered to agencies, one attorney tells *Inside EPA*.

But a recent study of how courts have ruled in challenges to EPA and other agencies' actions shows the impact that limiting or scrapping *Chevron* could have. The report, co-authored by law professors Kent Barnett and Chris Walker and slated for future publication in an upcoming *Michigan Law Review* issue, finds that courts are far more likely to strike down agency rules and other actions when *Chevron* is not involved.

During a May 25 presentation on his findings hosted by the District of Columbia Bar Association, Walker downplayed the potential for *Chevron* to be overturned altogether, either by the court or through legislation, but said Gorsuch's arrival on the high court means EPA and other agencies will see less deference in cases there.

"It's going to be different now that we've got Gorsuch," he said. -- David LaRoss ([dlaross@iwpnews.com](mailto:dlaross@iwpnews.com))

## ACE

Former EPA Official Claims Obama Holdovers Stealthily Pushing An 'Alarmist' Climate Study Right ... The Daily Caller

## Politico's Morning Energy

**INHOFE NOT WILD ABOUT RED-BLUE CLIMATE DEBATE:** EPA Administrator Scott Pruitt didn't discuss his plans to hold a red team-blue team public debate on the scientific consensus on climate change with him, but one of his normal allies, Sen. [Jim Inhofe](#), thinks it isn't useful. "I don't think there's anything to be accomplished," he told ME.

**OIL AND GAS INDUSTRY WANTS FULL COURT REVIEW OF METHANE STAY:** EPA's stay of the Obama-era methane rule may be headed to the full D.C. Circuit Court of Appeals. EPA had not filed any petition as of the midnight deadline to decide whether and how to appeal the early July ruling striking down Administrator Scott Pruitt's 90-day stay of the methane rule for new oil and gas wells. The court agreed not to order EPA to immediately resume enforcing the regulation, but the judges gave EPA limited time to seek an appeal. While EPA did not file anything on Thursday, a coalition of industry

groups did, requesting an *en banc* review by all 11 judges at the D.C. Circuit. It typically takes the court months even to decide whether to grant *en banc* review, long past the point at which Pruitt's 90-day stay would expire, but the court may speed things up under the circumstances. It's unclear whether the rule will take effect in the meantime, but the three-judge panel indicated it wasn't comfortable letting EPA keep it on hold indefinitely after Pruitt's action was found to be unlawful. The groups argued that the stay should remain in place in the meantime.

## **WILDFIRES: Scientists fly straight into smoke to measure pollutants Greenwire**

To measure how the massive plumes of smoke produced by wildfires affect the environment and public health, scientists have to fly into the thick of the blaze.

Wildfire smoke is rife with a variety of pollutants that can affect everything from human lungs to the global climate.

The Forest Service runs a lab in Montana to study how different types of fuel might burn differently. But to capture the diverse portfolio of a real fire, scientists have developed planes repurposed for the task.

During the Rim Fire, which ripped through Yosemite National Park in 2013, scientists flew through the smoke in an Dassault/Dornier Alpha fighter jet and a repurposed Douglas DC-8. Both were equipped with special sensors and lab equipment.

Scientists are hopeful that data from the sky can help them make more accurate assessments of wildfire pollutants.

"We're really optimistic that our data can provide sort of truth, so they can continue improving their models," said Laura Iraci, a NASA chemist (Menaka Wilhelm, Wired, July 26). — NS

## **POLITICS: 4 ways critics plan to attack climate science Climatewire**

For every move the Trump administration makes to unravel greenhouse gas regulations, the endangerment finding is the mechanism through which a future president could re-establish climate rules on power plants and other emission sources.

The finding holds that carbon dioxide and other greenhouse gases harm human health, and it says they must be regulated by the executive branch. The finding is detested by some conservative groups, which prioritize its reversal over less ambitious deregulatory steps, like unwinding the Clean Power Plan.

Taking it on is a difficult undertaking, however, and is one that some observers describe as highly improbable because a mountain of climate science would have to be refuted — with an equally voluminous amount of research that questions the impacts of greenhouse gases.

If U.S. EPA Administrator Scott Pruitt does decide to reopen the endangerment finding, a group of researchers from conservative think tanks and elsewhere will be ready to assist him. They would go after the very tools used to assemble the finding, they say, including climate models and calculations that put a value on the social cost of carbon.

Their viewpoints are largely outside the mainstream body of climate science, which holds that humans are warming the Earth at an unprecedented pace, chiefly through the burning of fossil fuels. A majority

of climate scientists say the amount of evidence about people's impacts on the globe is continuously growing. What's more, the endangerment finding relies heavily on the findings of the Intergovernmental Panel on Climate Change, which is considered the most thorough review of the world's best climate science.

Publicly, neither Pruitt nor the White House has stated a desire to reopen the finding, though some see Pruitt's call for a televised debate of climate science as the beginning of that process.

The field of researchers that would be willing to take on the dominant findings in climate science is relatively small. Here are some of the key areas where the country's most prominent skeptics say the endangerment finding is vulnerable to challenges. Mainstream researchers push back on all of these points.

### **Sea-level rise**

The finding relies on research gathered for the IPCC showing that sea levels are rising. It does not, however, measure humanity's exact role in those rising sea levels, said H. Sterling Burnett, a research fellow on environmental policy at the Heartland Institute, a libertarian think tank. They have been rising since the last ice age, he said.

"If you're talking about sea-level rise, there just is no way to tease out human contribution to ongoing sea-level rise from natural sea-level rise," Burnett said. "It can't be done, and it's not clear because sea-level rise is not abnormal ... [and] has not significantly accelerated."

He said sea-level models used in the endangerment finding are overblown and that past models have missed estimates or exaggerated them. Models overstate the amount of warming we've experienced, he said. Land-based data have been "fiddled with" by government agencies involved in the Paris Agreement and are not reliable, Burnett added.

**Mainstream view:** Sea-level rise can be strongly connected to human activity, which is warming the planet at unprecedented rates and causing atmospheric carbon dioxide levels to spike in recent decades. Warming is particularly acute in the Arctic, which is already undergoing dramatic transformations, according to NOAA researchers. The melting of glaciers is fueling sea-level rise across the globe. Ocean levels have risen about a foot in the last century.

### **CO2's effect on climate**

The endangerment finding relies heavily on climate modeling, which is unreliable and has been proved wrong, said John Christy, a climate scientist at the University of Alabama in Huntsville. He said current modeling fails validation tests and does not conclusively prove that carbon dioxide is having a significant effect on the climate.

"The models are incompatible with the real world," he said. "They do not represent how the real world has evolved in the past several decades. You would not admit model output as admissible evidence at that point."

Though a majority of scientists say that sea-level rise is closely connected to human activity and has risen steadily in recent decades, partially because of melting in the Arctic, Christy said he can prove that it's not from human activity, but from natural cycles related to global heating and cooling. He said sea levels have been rising for 25,000 years and that it will continue because they are not at the elevation they were 130,000 years ago, during the last interglacial period. The endangerment finding relies on selected studies and does not include enough research, which casts its conclusions into doubt, Christy said.

If the science were being evaluated in a courtroom, he could prove that climate models showing dire future predictions can be manipulated, he said.

"You cannot prove that," Christy said. "All you can do is demonstrate from a model whether it might. But then again, I come along and I can demonstrate that the model is falsifiable and falsified against real data."

**Mainstream view:** Climate scientists say models are sophisticated calculations that combine real observations with educated predictions. Models have underestimated many observed changes, in particular the rate of sea-level rise over the last decade. One example is the breakup of the Larsen ice shelf in Antarctica, which is not reflected in the models, but could be a major contributor to sea-level rise if the area continues to splinter. Glaciers in Greenland have also retreated faster than models estimated.

### **Climate model tuning**

Climate models are used to simulate conditions on Earth and are "tuned" by researchers to best replicate future atmospheric conditions with the input of data. But such tuning can be subjective, said Pat Michaels, director of the Center for the Study of Science at the Cato Institute. So if researchers are overly focused on accounting for anthropogenic warming, while downplaying natural factors that affect warming, that can skew future climate predictions. As an example, he said models are predicting more warming than is being observed in some parts of the globe. Models show that temperatures over the troposphere, which accounts for about one-third of the planet's surface, are supposed to be much higher than they actually are now, he said.

Paraphrasing Einstein, Michaels said the other side may have far more scientists and studies, but one climate skeptic armed with the right sort of data could prove them all wrong.

"This no longer resembles very much what most people would call science," he said. "I would say it is more akin to mathematical philosophy, and that to me is an exceedingly weak point in the endangerment finding, that the models are arbitrary and there's all the human dynamics that begin to appear."

**Mainstream view:** Models are tuned for accuracy, and tweaking some of the data that informs them is like tuning a guitar string to a particular note. Research has shown that modeling works, and predictions about 2020 from decades ago are being borne out right now. There have been some missed predictions, including an overestimation of ice loss in Antarctica and an underestimation of ice loss in the Arctic. But in the mean, predictions have proved accurate.

### **Social cost of carbon**

The endangerment finding is the basis for EPA regulations of greenhouse gases. But by reworking the social cost of carbon, which puts a dollar value on the way emissions affect the planet, the endangerment finding could be unnecessary, said Judith Curry, a climatologist and former professor at Georgia Tech. By reducing the predicted economic impacts of emitting carbon, the benefits of regulation dwindle, in her estimation.

She questions the accuracy of the social cost of carbon and said even a slight tweak to some of the figures used to arrive at its valuation could weaken the endangerment finding by, in essence, proving regulations are not necessary. More importantly, she said, the calculation doesn't include the benefits of fossil fuel usage, like society's use of electricity and transportation fuels.

The primary issue is that the endangerment finding does not recognize the challenge of attributing events to human-caused climate change, such as extreme weather, which the climate models can't simulate accurately, Curry said. She adds that it's "complete voodoo," and a political value judgment, to put a cost on climate change effects that may take hundreds of years to play out.

"It's fraught with so much uncertainty," Curry said. "You can come up with almost whatever you want based on the assumptions you make, and the party line is to make a certain set of assumptions and you get a certain answer, but even if you make the most dire assumptions, it's very hard to make this turn out to be very bad."

**Mainstream view:** The social cost of carbon was always going to be politically fraught, since it attempts to place a cost, now about \$40 a ton, on what today's emissions will yield in the future. Critiquing some of the factors that go into the cost determination does not mean that the costs associated with climate change are nil, supporters say. The endangerment finding is not a regulation, but the building block for regulations. Weakening the social cost of carbon won't undercut its finding that carbon dioxide emissions are harming humanity.

### METHANE: Enviros, industry wrestle over fate of standards in court [Energywire](#)

Industry and environmental groups pushed ahead last night in separate legal battles over Obama-era standards for methane emissions from the oil and gas sector.

In late-night court filings yesterday, industry groups urged a Washington, D.C., court to reinstate a U.S. EPA stay of emissions restrictions for new oil and gas sources.

Meanwhile in California, environmental groups pressed another court to reject the Trump administration's attempt to freeze separate Bureau of Land Management standards for oil and gas operations on public and tribal lands.

The legal filings are the latest in what has become a tumultuous battle over the Obama administration's attempts to slash greenhouse gas emissions from the industry. Agency officials have been working to pause and ultimately undo the rules to meet President Trump's domestic energy production priorities.

The Trump administration's deregulatory efforts suffered a blow earlier this month when a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit struck down EPA's attempt to temporarily delay the standards to review petitions from the oil and gas industry ([Greenwire](#), July 3).

As expected, industry groups last night asked the D.C. Circuit to reconsider the case before all active judges. They argued that the court lacked jurisdiction to review EPA's postponement of the methane standards because it was not a final agency action.

"The panel's decision violates Supreme Court and D.C. Circuit caselaw because it entailed review of non-final agency actions: EPA's decision to grant administrative reconsideration and EPA's three-month stay," the groups told the court.

EPA has not filed a similar motion for reconsideration.

Agency lawyers earlier this month said they were considering whether to seek rehearing. Two weeks ago, they successfully persuaded the court to give the agency two weeks to consider its legal options before enforcing the methane standards at issue ([E&E News PM](#), July 13).

### **BLM's rule**

Environmental groups, meanwhile, find themselves fighting the opposite battle in district court in California.

Last night, they asked the court for summary judgment reversing BLM's attempt to indefinitely pause a regulation to cut methane emissions on public and tribal lands.

BLM moved to pause the standard last month under a provision of the Administrative Procedure Act that allows agencies to postpone the effective date of rules that are facing litigation. California, New Mexico and a large coalition of environmental groups quickly filed suit.

Now, they're asking the California court for a swift decision in their favor. They say the APA does not allow postponement of a rule that is already in effect and that Interior Secretary Ryan Zinke is attempting to scrap a rule without proper public notice and comment.

"While a new administration may seek to change the policies of previous ones, no federal agency has authority to change the compliance dates in a duly promulgated effective rule without first providing notice and an opportunity for public comment, thoroughly explaining its decision, and pointing to facts in the record to support the change, pursuant to the Administrative Procedure Act," the groups told the court.

California and New Mexico made a similar request in the same court on Wednesday. BLM lawyers, meanwhile, are pushing to have the case transferred to a federal district court in Wyoming.

## CSS

### Bee Pesticide Ban Debate Could Arise in Next Farm Bill Daily Environment Report

Rep. Earl Blumenauer (D-Ore.) wants to include a ban on pesticides linked to declining bee health in next year's farm bill, one of several initiatives he is pushing in the legislation to reauthorize agriculture and nutrition programs.

Thirty-one Democrats are backing a bill—the Saving America's Pollinators Act of 2017 ([H.R. 3040](#))—that would suspend the approval of neonicotinoid pesticides, common insect-killers that are said to harm honeybees, aquatic insects, birds, and other insects and animals. H.R. 3040 would ban imidacloprid, clothianidin, thiamethoxam, dinotefuran, and any other neonicotinoids until the Environmental Protection Agency can determine that the pesticides won't harm pollinators, based on peer-reviewed studies.

Blumenauer, one of the bill's sponsors, told Bloomberg BNA he hopes the bill "will be folded into part of a larger initiative" like the next farm bill. Blumenauer is set to release a report next week outlining several measures to support small farmers, local food systems, and sustainability.

Blumenauer and Rep. John Conyers (D-Mich.) introduced a similar pollinator bill in the last two Congresses, but neither received a hearing in the House Agriculture Committee.

Agriculture Chairman Michael Conaway (R-Texas) told Bloomberg BNA that he would be open to hearing Democrats' case for the bill.

“That will be a part of the conversation,” he said. “We need a lot more evidence on what's causing [bee declines], but I'm willing to talk to my Democratic colleagues on this issue because it's important to all of us. If it's important to them, I'll absolutely talk to them about it.”

Tennessee Rep. John Duncan and former Wisconsin Rep. Thomas Petri were the only Republicans to cosponsor the bill in the 113th and 114th Congresses.

The 2014 farm bill is set to expire next year, and lawmakers and advocates are beginning to plan which provisions will be included in the next version. That legislative package will authorize funds for agricultural commodity payments, food assistance for the poor, land conservation, and other programs. The current farm bill costs \$457 billion over its five-year life span, according to the Congressional Budget Office.

### **Neonicotinoids Being Studied**

Most scientists agree that pesticides negatively affect bee health, but the role that neonicotinoids—often shortened to neonics—play is controversial among bee specialists. A variety of factors, like the loss of wild grasses and flowers, parasitic mites, and climate change also are stressors on pollinators.

The EPA is reviewing the risks that neonics pose to pollinators.

The insecticides have been implicated because they are coated on seeds and flow through a plant's vascular system, showing up in pollen that bees carry back to their hives.

A pair of scientific studies in *Science* last month linked neonicotinoids to poor reproduction and shorter lifespans in European and Canadian bees. The research was funded in part by Bayer CropScience and Syngenta AG, the makers of imidacloprid, clothianidin and thiamethoxam.

The pesticide industry trade group CropLife America said that banning a class of pesticides would not solve the pollinator health problem.

“Neonics are evaluated, tested, and labeled so that users apply them at the right time and in the right amount according to label directions, minimizing risk to pollinators,” the organization said in a statement to Bloomberg BNA. “CLA looks forward to working with beekeepers, beekeeping organizations, and other interested stakeholders as we did in the previous Farm Bill to find solutions to the variety of challenges to pollinator health.”

Eric Silva, federal policy counsel for the American Honey Producers Association, said the organization would focus on expanding the limits for emergency financial assistance for commercial beekeepers, increasing pollinator-friendly plants on federally-funded conservation acres, and boosting cross-agency research on honeybee health.

To contact the reporter on this story: Tiffany Stecker in Washington at [tstecker@bna.com](mailto:tstecker@bna.com)

To contact the editor responsible for this story: Rachael Daigle at [rdaigle@bna.com](mailto:rdaigle@bna.com)

## HHRA

### GOP senators seek CASAC cost review in setting NAAQS Inside EPA

Senate environment panel Republicans are urging EPA Administrator Scott Pruitt to have a key air advisory panel examine adverse economic and other impacts from strict national ambient air quality standards (NAAQS) for ozone and other pollutants, though environmentalists note that consideration of costs in setting NAAQS is unlawful.

In a July 27 letter to Pruitt, Senate Environment & Public Works Committee Chairman John Barrasso (R-WY), air panel Chairman Shelley Moore Capito (R-WV) and regulatory oversight panel Chairman Mike Rounds (R-SD) claim EPA has long neglected a Clean Air Act mandate to have the Clean Air Scientific Advisory Committee (CASAC) study “any adverse public health, welfare, social, economic, or energy effects which may result” from the NAAQS.

Consideration of economic impacts and other consequences could potentially be used as justification for avoiding stringent standards that Republicans have long argued are onerous for states to meet.

“As you review 2017 nominations for CASAC members, we request that you put measures in place to ensure that moving forward, CASAC complies with these statutory obligations. CASAC must be constituted of experts who can provide independent counsel to you in all of the above areas,” says the letter.

They ask Pruitt to choose CASAC members who will consider the impact of naturally occurring or international “background” ozone on states' ability to comply with a stringent ozone NAAQS, which GOP and industry critics have long cited to oppose EPA's 2015 rule that tightened the standard from 75 parts per billion (ppb) down to 70 ppb.

The letter also touts a 2015 Government Accountability Office (GAO) report that found “CASAC has never provided advice on adverse social, economic, or energy effects related to NAAQS because EPA has never asked CASAC to do so.”

CASAC nominations are currently pending, but since the call for nominees went out in June -- two months later than the usual April timeframe -- stakeholders have raised concerns that CASAC's new members may not be chosen quickly enough for the panel to be able to operate when the term of its chairman expires Sept. 30.

Meanwhile, Democrats have written to GAO seeking a report on whether EPA is “protecting the independence and neutrality” of its 23 advisory committees, including CASAC, following Administrator Scott Pruitt's recent decisions not to renew the terms of nine of the members of the agency's Board of Scientific Counselors.

Environmentalists have raised fears that Pruitt is seeking to consider costs when setting NAAQS, a move supported by many in industry but currently banned under Supreme Court precedent.

## SSWR

### The EPA Still Hasn't Been Held Accountable for the Gold King Mine Blowout National Review

### House Panel Approves Bipartisan Overhaul Of Drinking Water Protection Inside EPA

The House Energy & Commerce Committee has approved bipartisan legislation to reauthorize the Safe Drinking Water Act (SDWA), with increased authorization levels for infrastructure funding, expanded monitoring of emerging contaminants and targeted attention on replacing lead pipes, drawing praise from Democrats who initially criticized the bill.

"Moving a serious reauthorization of any major environmental law, like the Safe Drinking Water Act, takes a lot of cooperation and willingness to talk out the issues and find common ground," Chairman Greg Walden (R-OR) said during the July 27 markup. "That common ground brought us to where we are today. H.R. 3387 focuses on three main principles: increasing funding to address drinking water systems' physical needs, aiding states and utilities with compliance and operation of the drinking water program, and encouraging the wisest use of money that is spent."

The bill passed the committee on a voice vote, including a manager's amendment sponsored by Environment and the Economy Subcommittee Chairman John Shimkus (R-IL) that was finalized late on July 26 after negotiations with committee Democrats.

"Both sides needed to make not just difficult decisions but hard choices," Shimkus said, adding that "the amendment is not perfect, but it is a step forward and worthy of member support."

Committee members said they are hopeful the bill will see quick floor action after lawmakers return from the August recess.

Rep. Frank Pallone (D-NJ), the full committee's ranking member, called the initial discussion draft of the legislation inadequate, but he backed the bill at the subcommittee's markup July 13. And at the full committee markup, Pallone said several changes had been made to the bill, some of them at the last minute, that address all of the Democrats' outstanding issues.

H.R. 3387 was authored by Rep. Gregg Harper (R-MS) but includes provisions that were originally in bills introduced by Democrats, including Reps. Paul Tonko (D-NY), Scott Peters (D-CA), Gene Green (D-TX), Bobby Rush (D-IL) and Pallone.

The bill authorizes \$8 billion over five years for the drinking water state revolving loan fund (SRF) program; expands the eligible uses of the drinking water SRF to include costs associated with preconstruction activities and replacing or rehabilitating aging treatment, storage or distribution facilities; and requires EPA to collect data from states on SRF best practices and distribute the information within three years of the bill's enactment.

Pallone said the authorized funding level in the bill is "not as high as we wanted," but is nonetheless an increase over previous authorizations.

Additionally, the bill encourages more readable and understandable consumer confidence reports and enshrines their electronic distribution in law. It also calls on EPA -- in coordination with states, public water systems and other stakeholders -- to develop a strategic plan for improving the accuracy and availability of monitoring data collected to demonstrate compliance with national primary drinking water regulations.

### **Unregulated Contaminants**

Furthermore, the bill expands the requirements for utilities to monitor for unregulated contaminants, which is currently limited to facilities serving more than 10,000 people. Under the bill, all public water systems serving between 3,300 and 10,000 persons would also have to monitor for unregulated contaminants EPA has identified as a priority, along with a representative sample of public water systems serving less than 3,300 people. But the monitoring requirements would only go into effect after EPA determines there is adequate lab capacity to handle the samples.

Tonko, who pushed for expanded unregulated contaminant monitoring, said such a provision could help communities such as [Hoosick Falls, NY](#), which has dealt with drinking water contaminated by perfluorinated chemicals.

The bill also targets lead contamination in drinking water by requiring EPA in its periodic drinking water infrastructure needs surveys to include an assessment of the costs to replace all lead service lines, including separate descriptions of the costs associated with replacing portions of the service lines owned by utilities and those portions owned by other entities.

And it creates a grant program, authorized at \$5 million per year between fiscal year 2018 and FY22, to pay for the replacement of drinking fountains in schools. Rep. Yvette Clarke (D-NY) noted that drinking fountains have been off-limits to children for many years in most New York City schools due to concerns about lead contamination.

Other provisions in the bill include reauthorization of funding for voluntary source water protection programs; requirements for water systems to evaluate the risks to and resilience of their infrastructure to malevolent acts and natural hazards; and authorization for states to require utilities with recurrent violations of drinking water requirements to consolidate with another system or transfer ownership.

Peters helped author the resiliency language, Pallone said, and Shimkus noted the Bioterrorism Act of 2002 included requirements for utilities to conduct vulnerability assessments, but that authorization has lapsed.

Green helped author the provisions requiring restructuring for utilities with repeated violations, Pallone said. -- *Lara Beaven* ([lbeaven@iwpnews.com](mailto:lbeaven@iwpnews.com))

### **EPA Water Rule Repeal Based on Sloppy Cost Analysis: Economists Daily Environment Report**

The Trump administration was sloppy in how it estimated the economic impact of a proposal to repeal an Obama-era water pollution regulation, relying on data and assumptions that industry previously criticized, according to economists and regulatory analysts interviewed by Bloomberg BNA.

Chief among their complaints was that the Environmental Protection Agency and the U.S. Army Corps of Engineers used recession-era economic data and failed to account for some of the benefits of

leaving the 2015 Clean Water Rule in place. Their [economic analysis](#) even drew criticism from David Sunding, a University of California-Berkeley agricultural economist who was hired by industry groups to counter the [analysis](#) the Obama administration used to back its regulation.

"I am not normally this dismissive, but this is the worst regulatory analysis I have ever seen," Sunding told Bloomberg BNA in telephone interview.

Sunding had previously criticized the Obama-era study for using "flawed" data, which he said resulted in understated costs and overstated benefits. The Trump administration's approach relies on much of the same data.

The economic analysis projected that repealing the 2015 regulation, commonly known as waters of the U.S., or WOTUS, would be a net gain for the economy because the costs avoided through repeal would be greater than the benefits that would not be realized. The [proposed](#) repeal by the EPA and the corps is the beginning of a planned two-step process that also will see the agencies work on a replacement (82 Fed. Reg. 34,899).

Regulatory scholars interviewed by Bloomberg BNA indicated that the EPA's economic analysis is likely the result of the agencies' wish to move to quickly repeal the regulation following a February [executive order](#).

The EPA conducted the cost-benefit analysis because presidential executive orders, as well as past guidance issued by the agency and the White House, require an economic analysis for "significant regulatory actions," the agency told Bloomberg BNA in an email. The EPA also said it would conduct a subsequent cost-benefit analysis for its replacement regulation.

"As is required for all significant regulatory actions, EPA intends to develop an economic analysis for the step 2 rulemaking," the agency said.

### **Data, Methodology Criticized**

The 2015 water regulation, which was stayed by a court a month after it went into effect, defined which waters and wetlands are subject to federal permitting programs, as well as state water quality standards and certifications.

President Donald Trump made repeated campaign promises to repeal WOTUS, which is opposed by a variety of industrial sectors, including agriculture, iron and steel manufacturing, home builders, and mining groups. Industry associations representing those sectors argue it would trigger requirements to obtain costly federal permits to dredge wetlands and streams that they say fall under state and local laws already.

Back in 2013, the industry-led Waters Advocacy Coalition, which includes the American Farm Bureau Federation, used Sunding's critique to make its case that the Obama EPA overstated benefits and underestimated the costs of implementing the WOTUS regulation. Sunding said that 2013 analysis used incomplete data, flawed methodology, and outdated studies.

But Sunding said the EPA's new analysis, which relies on much of the same data, is not any better, a view shared by several other economists and attorneys contacted by Bloomberg BNA. The Farm Bureau, which supports the repeal effort, declined to comment on the underlying economic analysis.

The Trump administration used the 2013 estimates as a starting point, assuming that the costs of that regulation would be avoided by a repeal and the benefits of the regulation would be foregone. The proposed repeal was estimated to result in \$162 million to \$476 million in avoided costs, while the

estimated foregone benefits range from \$34 million to \$73 million per year.

In the 2013 analysis, the EPA estimated the annual costs of implementing the water jurisdiction rule to range from \$133.7 million to \$277 million, but those costs were outweighed by annual projected benefits of between \$300.7 million and \$397.6 million.

The EPA's 2017 approach drew the ire of economists because no recent permitting data was used to estimate the economic impact of the proposed repeal. Instead, the analysis used data from fiscal years 2009 and 2010, a time when U.S. economic activity was at its lowest since World War II, particularly in the manufacturing, residential, and commercial development sectors.

Sunding said the EPA used "an artificially low economic baseline" in its analysis.

"I have a hard time taking their numbers seriously," he said.

### **Some Regulatory Benefits Excluded**

The Trump EPA's approach also drew criticism for excluding the benefits that would be realized through the mitigation of wetland loss from dredging activities.

The EPA said in its proposal that it didn't include the benefits of mitigating wetland losses because the 2013 analysis used outdated studies. The agency did include the estimated costs industry would have faced for mitigation measures.

Dave Owen, a University of California Hastings College of the Law professor who specializes in environmental and natural resources law, said the EPA should have instead used estimates from more recent studies.

"A cost-benefit analysis looks at what it takes to implement a program, but this analysis looks at the costs and throws its hands up in the air when it comes to benefits," Owen said.

The decision to exclude the wetland loss benefits was described as "political" by economists and regulatory analysts from both sides of the political spectrum.

The Trump administration could have taken a more straightforward approach to the analysis by taking the earlier study and reversing it, according to James Goodwin, an economist by training and a senior policy analyst with the Center for Progressive Reform. But that approach would have projected the costs avoided by a repeal would be outweighed by the avoided benefits, which Goodwin said would have gone against the Trump administration's view that the water jurisdiction rule was costly and burdensome.

Instead, Goodwin said the EPA "monkeyed" with the 2013 estimates to ensure that the net avoided costs came out higher than the net foregone benefits.

"I suspect they did this for politics: We did this action and it's saving us money," William Yeatman, a senior fellow with the Competitive Enterprise Institute, told Bloomberg BNA.

Yeatman, who has been critical of the Obama-era regulation, said this was a "missed opportunity" for the EPA to perform an in-depth analysis in light of the criticism of the earlier analysis, he said. "I understand why" the EPA chose administrative efficiency and speed to undo the 2015 rule over a more in-depth analysis, he said.

But Yeatman said "you can't criticize a study for all these faults and use that study."

To contact the reporter on this story: Amena H. Saiyid in Washington at [asaiyid@bna.com](mailto:asaiyid@bna.com)

To contact the editor responsible for this story: Rachael Daigle at [rdaigle@bna.com](mailto:rdaigle@bna.com)

## ***Science and Science Communication***

**How the climate crisis could become a food crisis overnight** Washington Post

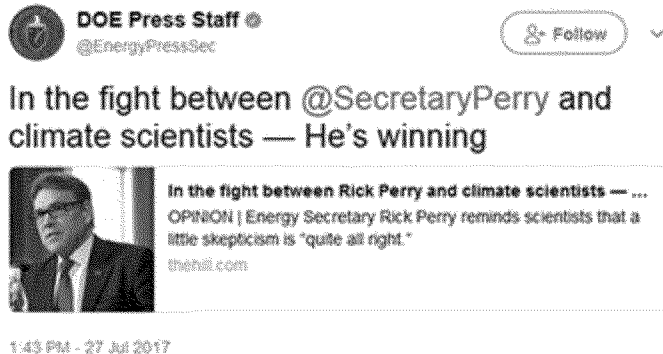
**How Climate Change Impacts Congressional Districts Over Next 80 Years. Roll Call**

**DOE: Tweet claims Perry is 'winning' on climate science** E&E News PM

The Department of Energy today said Secretary Rick Perry is "winning" the fight with climate scientists and attacked the American Meteorological Society for challenging Perry's views on carbon dioxide.

DOE made the "winning" comments on its official Twitter account before linking to an op-ed in *The Hill* today by Ross McKittrick, an adjunct scholar at the Cato Institute.

McKittrick said scientific institutions like the AMS have been hypocritical in slamming Perry for his comments to CNBC last month that CO2 is not the primary driver of climate change. At the time, Perry said he believed ocean waters and the environment were the main causes of warming.



@EnergyPressSec/Twitter

"It shouldn't be a debate about is the climate change changing, is man having an effect on it," Perry said. "The question should be ... just how much and what are the policy changes that we need to make to affect that?"

The comments prompted AMS Executive Director Keith Seitter to write a letter to Perry citing the thousands of independent studies that say climate change is caused by rising CO2 levels. NASA, for example, says at least 97 percent of climate scientists agree that human activities drive warming.

"Without this fundamental understanding of the science, it is impossible to discuss potential policy changes in meaningful ways," the AMS **letter** said. "We stand ready to work with you or your staff to explore how the science can be used effectively to address policy issues."

In the new op-ed, McKittrick linked to climate skeptic websites in charging that AMS ignored statements from Obama officials on climate. It also cites the views of University of Colorado political scientist Roger Pielke Jr., who has sparred with climate scientists like Pennsylvania State University's Michael Mann.

"The meteorological society leapt to condemn Perry for a cautious response to an awkward question," McKittrick said. He said Seitter's offer to "stand ready" was ironic.

"He meant it in a condescending way, but clearly there are many members who side with Perry," McKittrick said.

The AMS said it had no comment on the *Hill* article. DOE did not respond to a request for comment.

The agency's retweet drew immediate pushback on Twitter, with some respondents calling the action "surreal" and confounding given the many scientists who work at the agency. One account claiming to be operated by agency civil servants accused the agency of violating the law.

But Richard Painter, who served as the chief ethics lawyer for President George W. Bush, said federal officials didn't violate federal law when they reposted the article, noting the Hatch Act only bars agencies from entering into the political fray in backing candidates, not ideological arguments.

"The distinction isn't whether it's ideological or scientific. If that were the case, this administration would be violating the Hatch Act 97 percent of the time," Painter said. "It has to do with endorsing a candidate."

DOE's Twitter activity has stirred up controversy of late. Yesterday, Rep. Frank Pallone (D-N.J.) asked the Government Accountability Office to investigate a DOE tweet supporting Perry's earlier op-ed calling for overturning Obamacare. Pallone questioned whether the health care tweet might violate the Consolidated Appropriations Act, which prevents federal agencies from using appropriated funds for "publicity or propaganda purposes" (*E&E Daily*, July 27).

## **Fertilizers, a Boon to Agriculture, Pose Growing Threat to U.S. Waterways** *New York Times*

Nitrogen-based fertilizers, which came into wide use after World War II, helped prompt the agricultural revolution that has allowed the Earth to feed its seven billion people.

But that revolution came at a cost: Artificial fertilizers, often applied in amounts beyond what crops need to grow, are carried in runoff from farmland into streams, lakes and the ocean. New research suggests that climate change will substantially increase this form of pollution, leading to more damaging algae blooms and dead zones in American coastal waters.

A study published Thursday in *Science* concludes that eutrophication, excessive nutrient enrichment, is likely to increase in the continental United States as a result of the changes in precipitation patterns brought by climate change. Heavier rains caused by warmer temperatures will cause more agricultural runoff, sluicing more nutrients into rivers, lakes and oceans.

The authors found that future climate change-driven increases in rainfall in the United States could boost nitrogen runoff by as much as 20 percent by the end of the century.

"When we think about climate change, we are used to thinking about water quantity — drought, flooding, extreme rainfall and things along those lines," said Anna Michalak, a professor of global ecology at the Carnegie Institution for Science in Stanford, Calif., and one of the authors of the study. "Climate change is just as tightly linked to issues related to water quality, and it's not enough for the water to just be there, it has to be sustainable."

Excess nitrogen from the fertilizers can cause eutrophication in the ocean, which can lead to harmful algae blooms or hypoxia — reduced levels of oxygen that create conditions in which organisms can't survive.

The study's authors looked at three emissions scenarios — high, stable and falling — in both the near and far future in more than 2,100 “subbasins” or watersheds in the continental United States.

Their results show that in the high emissions scenario, which assumes that future greenhouse gas emissions trends follow those of the past, increased precipitation alone would cause “large and robust increases” in nitrogen amounts on the watershed scale, particularly in the Upper Mississippi Atchafalaya River Basin, the Northeast and the Great Lakes basin.

In the stable emissions model, in which a rise in global surface temperatures by two degrees Celsius from preindustrial times is more than likely, the Northeast would still see a robust increase in nitrogen loading. This is in part because the nitrogen accumulation will occur in areas that already are experiencing it, and because watersheds in the Northeast and elsewhere drain into coastal regions where nitrogen pollution is already affecting water quality, the study said.

For instance, the Chesapeake Bay has experienced a “dead zone,” a result of hypoxia, regularly since 1950. Earlier this summer, the National Oceanic and Atmospheric Administration predicted a larger than average dead zone there, despite previous efforts at reducing nutrient levels.

The most notorious dead zone in the country surrounds the mouth of the Mississippi River in the Gulf of Mexico, which this year is expected to cover an area approximately the size of Vermont, nearly 10,000 square miles, according to research from Louisiana State University.

While the researchers did not specifically model the global effects of climate change on nitrogen loading in other parts of the world, they applied their models to analogous areas outside the United States. They found that large areas of East, South and Southeast Asia may experience increases in nitrogen levels similar to those seen in the United States.

Because these regions are home to more than half of the world's population and are heavily dependent on surface water, the authors write, the effects of increased eutrophication are likely to be stark, turning the green revolution rather brown.

Farmers and agricultural authorities must take account of climate change and the prospect of increased rainfall in designing strategies to mitigate the effects of nutrient pollution. Otherwise, Ms. Michalak said, “They're going to fail.”

Moir

---

Moir McGuinness

EPA Research Editor in Chief  
202-564-1507—desk

202-590-0010—mobile

mcguinness.moir@epa.gov